TESTIMONY OF JOHN W. INGRAM
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ON H.R. 6637 AND RELATED BILLS
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND
AERONAUTICS OF THE HOUSE INTERSTATE AND
FOREIGN COMMERCE COMMITTEE
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I appreciate this opportunity to appear before the Committee to testify on H.R. 6637, a bill to encourage the movement in interstate and foreign commerce of recycled and recyclable materials and to reduce the quantities of solid waste in commerce which cannot be recycled or do not contain available recyclable materials. A bill containing a similar concept, H.R. 11878, the proposed Resource Conservation and Recycling Incentive Act of 1973, is also under consideration by the Committee and I would like to also comment on that proposal. Recycled and recyclable materials are commonly referred to as "secondary materials" and I will use this term in my statement.

In part, Title I of H.R. 6637 would require the Interstate Commerce Commission and the Federal Maritime Commission, within 24 months after the enactment of the bill, to investigate and formally identify all rates charged by transportation carriers subject to their jurisdiction, and to determine whether those rates charged for the transportation of recyclables or recycled materials are fair and reasonable, and whether they unjustly discriminate against the movement or

shipment of such materials in interstate commerce and favor the shipment of competing virgin materials or commodities. In addition, the Commissions would be required to make reports to the Congress and to review the situation on a continuing basis. H.R. 11878 would not only prohibit discriminatory rates, but would also require that such materials be transported at the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and would impose a severe penalty for violation of its provisions.

Both bills establish a presumption as the touchstone for measuring discrimination. H.R. 6637 provides in section 101(b) that if "it appears that a carrier's rate or rates for the transportation in interstate and foreign commerce of a recyclable or recycled material are equal to or higher than the rate or rates charged for the same transportation of a like quantity of a competing virgin natural resource or commodity of a higher commercial value, such rate or rates shall be presumed to be unreasonable and discriminatory." Section 203(f) of H.R. 11878 creates a presumption that if a recovered material is functionally or technically equivalent to or a substitute for a virgin material in an industrial or manufacturing process (including an energy or resource recovery process), then the two commodities are presumed to be commercially competitive. The burden of rebutting these presumptions is on the carrier establishing the rate, a reversal of standard administrative practice.

Discrimination against recycled or recyclable materials is of course undesirable. For this reason the Administration proposed in section 7(c) of H.R. 4873, introduced by Chairman Staggers on February 27, 1973, that the Interstate Commerce Commission, the Environmental Protection Agency and certain other listed agencies conduct within 12 months of the date of enactment of the bill and submit to Congress a thorough and complete study of rate setting practices with regard to the carriage of secondary materials by rail and ocean carriers. The study was to include a comparison of such practices with rate setting practices with regard to other materials, and would examine the extent to which, if at all, there is discrimination against secondary materials.

In addition to the Administration's continuing commitment to investigate and encourage the maximum use of secondary materials, I note that the mandate of section 603 of the Regional Rail Reorganization Act of 1973 is being implemented by the Interstate Commerce Commission's investigation, in Ex Parte 306, of possible unreasonable or discriminatory rates governing the transportation of secondary materials. In my opinion, the provisions of section 2, 3, 4, 15(1), 15(7) and 15(a) of the Interstate Commerce Act provide the Commission with a mechanism to investigate, identify and eliminate all transportation rates, practices, and procedures which are unreasonable or which unfairly discriminate against recyclable or recycled materials and in favor of competing virgin natural resources or commodities.

These existing remedies to the problem reenforce my belief that the provisions of the bills are unwise for a number of important economic, social, and technical reasons. First, the presumptions are of questionable validity. The presumption of H.R. 6637 is premised on a value of service concept of rail pricing, a concept that pegs the amount of a rate primarily to the commercial value of the commodity being transported. By equating virgin and recycled materials, section 101(b) of H.R. 6637 assumes (a) the commercial value of the two commodities is the same in most cases, and (b) that the costs of transportation are the same for both commodities. A similar assumption (a) is the express basis of the presumption in H.R. 11878.

The assumption of commercial equivalence is questionable. For example, waste paper is in competition not only with wood chips and pulp logs, but with other paper processing agents such as sulphuric acid. In addition, recycling of waste paper, because of the extensive bleaching required, may be more environmentally damaging under certain circumstances than the production of paper from virgin materials. Similarly, secondary ferrous metal products have different end uses, depending upon metallurgical composition, than iron ore (which has various grades and costs itself) and the companion ingredients of iron, limestone,

coke, and the like. Finally, not only are the material inputs themselves of differing commercial grades and costs, they are also used in different quantities and proportions by individual firms depending on such diverse factors as location, final product, economies or dis-economies of scale, technology, and the like. Finally, it should be emphasized that scrap suppliers operate in a commodity type market, and this makes it difficult to determine from day to day what portion of the final sale price to the scrap user is attributable to the rail rate, and hence, whether the rate is just and reasonable under the value of service concept of rail pricing. For example, the price of ferrous scrap is now some 2 1/2 times as high as in 1973, and some 5 times as high as in 1969. See Exhibit 1. This large increase in price is actually a greater incentive for the collection and shipment of scrap than marginal adjustments in freight rates.

The assumption of equal transportation costs is more dubious as most recycled materials are collected, marketed, and shipped to the consumer by a process that is markedly different from shipments of virgin materials. Virgin materials are often shipped under long term contracts that permit the use of unit trains and the predictable and regular allocation of equipment. Switching, fuel, labor, and rolling stock costs are substantially reduced as a consequence due to the more

expeditious movement of cars, reductions in the number of intermittent switches, interchanges and the like. In contrast, secondary materials are shipped primarily in the context of a fluctuating commodity market and numerous small dealers are involved. Pending the most favorable price for scrap, cars may be used for storage purposes by the shippers and the consignee, and as a consequence rolling stock capital costs are higher. Certain methods of loading and unloading scrap are particularly hard on rail equipment, in contrast to the specially designed equipment used to load unit trains of primary materials, so maintenance costs are higher. Cars must be furnished to individual shippers on a local service basis. This entails higher switching costs and consumes additional fuel and labor resources, particularly as most scrap shippers are located in urban areas. Thus, rates for secondary materials are usually higher than those for virgin materials because the costs of shipping secondary materials are usually higher. For a general discussion of the numerous cost factors involved in the rail industry, please see my testimony before this Committee on March 27, 1972, concerning H.R. 11826, the proposed Transportation Regulatory Modernization Act of 1971, published in Part I of Hearings on H.R. 11824 and related bills, pp. 215-220.

The above indicates that demand for scrap is determined only in part by the freight rate, and this portion of the price tends to be stable because of rigidities in the rate making process that are already contained in the rate making

provisions of the Interstate Commerce Act I have previously cited. From this it can be seen the difficulties incurred by secondary materials in competing with primary materials are more likely a matter of market penetration and acquisition of materials by individual scrap processors, and the highly competitive nature of that business than unreasonable or discriminatory rates. As the price of scrap rises, the scrap dealer has greater incentive to collect scrap and can afford to ship it further. Thus, to require, as H.R. 11878 does, scrap shipments to be under the lowest, lawful rate, raises a serious danger that the ability of a given scrap dealer to extend the scope of his market will be increased by a rail financed transportation subsidy rather than the underlying economic realities of the secondary material business. Such a policy will lead to an erosion of common carrier financial strength and the overall soundness of the transportation system as was recently witnessed in the Northeast.[1/] This danger is increased by the statutory presumption in H.R. 6637 of the commercial equivalency of virgin materials and recyclable materials. Such a presumption places the burden of disproving such commercial equivalency on the carrier, the party to a scrap transaction that is generally least qualified to make that judgment, and as such locks the carrier into a historic, static

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1/ For a discussion of the impact of below cost rates on the Penn Central as of 1972, please see pp. 212-14 of Part I of the House Hearings cited on the previous page.

rate structure, in contrast to the setting of rates based on a dynamic costing process. In contrast, the carrier is best qualified to determine its costs and develop a rate that is an incentive to the carrier to provide adequate equipment and service. Pricing flexibility rather than a rigid presumption would also enable the carrier to respond to short term fluctuations in the price of recycled or recyclable materials without creating an overall incentive to withdraw from the secondary market materials completely. The suspension provisions of section 15(7) of the Interstate Commerce Act can be invoked to provide relief to the shipper in the event of a threat of discrimination.[2/]

By preserving the value of service concept and creating a rigid regulatory process involving unworkable statutory presumptions, the subject bills actually act as a disincentive to provide the cars and efficient service necessary to facilitate the greatest possible utilization of secondary materials. In particular, it should be noted that the phrase "lowest possible rates compatible with the maintenance of adequate transportation service," or language of similar import, has historically lead to the establishment of rates that are non-compensatory, i.e., do not equal or exceed the variable costs of a given transportation service, including a reasonable return on investment attributable to that move.[3/] If this

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2/ Please see section 5 of H.R. 12891, the proposed Transportation Improvement Act of 1974.

3/ Cf. section 2(a)(1) of H.R. 12891.

occurs, the incentives for adequate rail investment in gondolas, the car most commonly used in the transportation of secondary materials, and other capital equipment serving the secondary market would be eliminated. The statutory requirement of a lowest lawful rate squarely raises the issue that a higher level of service would require a higher rate, and if a rate is both lawful and compensatory, and the lowest such rate, the quality of service tends toward the lowest lawful level.

In this regard, I would note that the proposed Transportation Improvement Act of 1974 recently submitted to the Congress is designed to reform rate making procedures to assure that rates are compensatory and more flexibility is available to meet fluctuations in the price of the commodity to be transported. The provisions of H.R. 6637 and H.R. 11878 move in the opposite direction and are probably self defeating in that they place unreasonable administrative and marketing burdens on the common carrier system. I cannot help but note that certain representatives of the secondary materials industry sought special rate privileges for their industry during the 1972 hearings on the proposed Surface Transportation Act of 1971, an Act designed to modernize and increase the efficiency and equities of our common carrier system. Please see Part 3 of Hearings Before a Subcommittee of the Senate Committee on Commerce on S. 2362 and related bills: 92d Cong., 2d Sess., at pp. 963-1020, particularly pp. 985-87; and Part 4 of

Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 11824, H.R. 11826, H.R. 11207 and identical bills: 92d Cong., 2d Sess., at pp. 1201-28. The cost and competitive factors concerning the secondary resource market I have discussed were not elaborated on in the testimony of the secondary materials industry in its discussion of purported rate discrimination. Instead, emphasis was placed on the dependence of the scrap industry on rail service and its need for additional gondolas, better service, and the beneficial environmental respects of that business. Finally, I note that special provisions for rates have traditionally been a burden on the common carrier system, including, for example, special rates furnished the Federal Government under section 22 of the Interstate Commerce Act. In addition, such rates are unfair to other shippers, who must pay what the traffic will bear if the erosion of the common carrier system is to be prevented.

The undesirable nature of the legislation in question is further revealed by a close technical analysis of the presumption contained in section 101(b) of H.R. 6637. The presumption speaks in terms of the appearance that if a carrier's rate or rates for transportation in interstate or foreign commerce of a recyclable or recycled materials are equal to or higher than the

rate or rates charged for the same transportation of a like quantity of a competing virgin natural resource or commodity possessed of a higher commercial valuation, such rates shall be presumed unreasonable and discriminatory. (Emphasis added.)

The concept of an unreasonable rate and discrimination is presently contained in sections 1, 2, and 3 of the Interstate Commerce Act, and involves the comparison of rates for different but commercially competitive commodities, moving between differently situated but commercially competitive persons, under similar transportation conditions. The presumptions in H.R. 6637 and H.R. 11878 attempt to remove the carefully drawn distinctions of the Interstate Commerce Act by establishing a uniform presumption of commercial equivalency that is based on the appearance of an unreasonable or discriminatory rate. This is the practical effect of the phrases "appearance of a rate equal to or higher than" and "of a competing virgin natural resource or commodity". Moreover, the phrase "for the same transportation of a like quantity of a competing virgin material" simplifies the issue of transportation characteristics that is another critical element of a section 2 or 3 proceeding. The phrase "same transportation" appears to imply a statutory criteria based on distance only, to the exclusion of other elements of transportation costs, such as switching, equipment costs,

maintenance and general line haul costs. Similarly, the phrase "like quantity" would imply that weight, not density is the basis of comparing the relative costs of given movement. However, primary and secondary materials generally have different weight densities, i.e., 100 tons of iron ore require one special purpose car but 100 tons of scrap might require two or three general purpose cars. Again, the transportation characteristics are different. Finally, the term "commercial value" is undefined, but it would appear to mean that the price and commercial utility of the product to the seller at the point of shipment. This element again increases the pressure for a transportation subsidy to extend the marketing area of the secondary material dealer at the expense of the common carrier system.

I therefore strongly urge that the Congress not address the issue of possible discrimination in the transportation rates for virgin and recyclable materials by means of a special statutory provision which presumes that rates for virgin materials are discriminatory. We would support instead that provision of the Administration's recycling bill, H.R. 4873, which calls for a study of the subject to examine the extent to which there may be discrimination against secondary materials. The Interstate Commerce Commission has already instituted a special rate making proceeding regarding recyclables, Ex Parte 306, pursuant to section 603 of the Regional Rail Reorganization Act

of 1973, Public Law 92-236. This proceeding, coupled with enactment of the proposed Transportation Improvement Act, should adequately deal with any rate discrimination that may actually exist. This concludes my statement and I would be glad to answer questions the Committee may have.